PUBLIC VERSION

Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

In the Matter of)
ESI)
Complainant,))) File N o.
٧.) Tile No
AT&T, CORP.)
Respondent)))

COMPLAINT

Colleen Boothby Sara Kuehnle Levine, Blaszak, Block & Boothby, LLP 2001 L St., NW, Suite 900 Washington, DC 20036 202-857-2550 cboothby@lb3law.com

Counsel for Complainant

Dated: December 13, 2016

Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

In the Matter of)
ESI)
Complainant,))) File No.
٧.) Tile 140.
AT&T CORP.)
Respondent))

FORMAL COMPLAINT

Pursuant to Section 208 of the Communications Act of 1934, as amended, 47 U.S.C. § 208 (the "Act") and Sections 1.720-1.735 of the Commission's Rules, 47 C.F.R. §§ 1.720-1.735, the complainant Express Scripts, Inc. ("ESI"), by its attorneys, submits this Complaint against AT&T Corp. ("AT&T"), and in support thereof states the following:

- ESI is a Delaware corporation with its principal place of business at One Express Way,
 Saint Louis, Missouri, 63121. ESI can be reached by telephone at (314) 684-5666 or via the undersigned counsel at (202) 857-2550.
- 2. ESI is the nation's largest stand-alone full-service pharmacy benefit management company, handling more than a million prescriptions every day through its networks of retail pharmacies and home delivery facilities. The company coordinates the distribution of outpatient pharmaceuticals through a combination of benefit management services, including retail drug card programs, home delivery services, formulary management programs, and other clinical management programs. ESI works with clients, manufacturers,

pharmacists, and physicians to achieve successful financial and health outcomes by assisting users in managing their drug spend and providing products and solutions focused on improving patient outcomes. ESI provides services to a wide variety of clients, including managed care organizations, health insurers, third-party administrators, employers, union-sponsored benefit plans, workers' compensation plans, government health programs, providers, clinics, and hospitals, among others.

- 3. ESI depends upon a substantial network of reliable telecommunications services. As a result, ESI's network services are not only a crucial input for conducting its business but also a significant cost component of the company's budget.
- 4. AT&T is a Delaware corporation with its principal place of business at 208 S. Akard Street, Dallas, Texas 75202-4206. Its telephone number is (210) 821-4105. AT&T is a common carrier engaged in interstate and foreign communications subject to Title II of the Communications Act of 1934, as amended ("Communications Act"), 47 U.S.C. § 201, et seq.

SUMMARY OF COMPLAINT

5. This complaint concerns the Commission's Universal Service Fund ("USF") contribution requirements. As set forth in greater detail below, ESI seeks relief from AT&T's violation of a simple and unambiguous rule, namely, the Commission's Truth-in-Billing rule for so-called "USF pass-through charges."

See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, 1998 Biennial Regulatory Review-Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, CC Docket No. 98-171, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, CC Docket No. 90-571, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, CC Docket No. 92-237, NSD File No. L-00-72, Number Resource Optimization, CC Docket No. 99-200, Telephone Number Portability, CC Docket No. 95-116, Truth-In-Billing and Billing Format, CC Docket No. 98-170,

- 6. USF pass-through charges were invented by carriers shortly after the Commission created the current USF contribution methodology.² The current USF contribution methodology requires carriers to contribute a percentage of their revenues to the USF. Carriers responded to their contribution obligation by imposing USF "pass-through" charges on their customers which single out their USF costs and treat them differently on their customer bills. Instead of recovering those USF costs in their general rates (as they do for other costs such as employee salaries, equipment purchases, office rent, electric bills, pole attachments, overhead expenses, etc.), the carriers created new USF line items on customer bills and set the amount of those line items significantly above the amounts that the Commission actually required carriers to pay into the USF.
- 7. In response, the Commission established a rule for USF pass-through charges which prohibits carriers from collecting more than the Commission requires them to pay.³ In other words, a carrier charge purporting to pass through an FCC-mandated USF contribution must be just that a pass-through. Carriers cannot misrepresent the FCC's mandate and turn a USF pass-through charge into a profit center.
- 8. ESI is filing the instant complaint because AT&T has done precisely what the Commission's rule prohibits AT&T has charged ESI a USF pass-through charge that exceeds the amount allowed by the rule.

Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002) ("USF Truth-in-Billing Order") at paras. 45-54.

See Federal State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) (subsequent history omitted).

USF Truth-in-Billing Order at paras. 45-54. The rule is codified at 47 C.F.R. § 54.712.

[END CONFIDENTIAL

- 9. AT&T's practice of inflating its USF pass-through charge in violation of the Commission's Truth-in-Billing rule constitutes an unjust and unreasonable practice under Section 201 of the Communications Act.⁴ By this complaint, ESI seeks a refund of the excessive amounts AT&T has collected from ESI by virtue of this practice.
- 10. No suit has been filed with any court by ESI alleging the same causes of action raised herein with respect to AT&T's behavior.

11. ESI did, however, engage in discussions with AT&T regarding the practice at issue and
[BEGIN CONFIDENTIAL INFORMATION]
[END CONFIDENTIAL INFORMATION].
STATEMENT OF FACTS
12. ESI purchases telecommunications services from AT&T pursuant to a Master Services
Agreement ("MSA") executed by ESI and AT&T in [BEGIN CONFIDENTIAL
INFORMATION] [END CONFIDENTIAL
INFORMATION]. Like the MSAs typical for this service, ESI's MSA contains Pricing
Schedules that establish the rates ESI must pay for [BEGIN CONFIDENTIAL
INFORMATION]

INFORMATION].

See Global Crossing Telecommunications, Inc. v. Metrophones Telecommunications, Inc., 550 U.S. 45 (2007).

- 13. The pricing for ESI's [BEGIN CONFIDENTIAL INFORMATION] [END]

 CONFIDENTIAL INFORMATION] service includes, inter alia, (1) separate schedules of charges for various [BEGIN CONFIDENTIAL INFORMATION] [END]

 CONFIDENTIAL INFORMATION] service elements and (2) credits that apply on an annual or other periodic basis. The credits reduce AT&T's charges to ESI for [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] services.

 (See, e.g., the MSA credit schedule attached as Exhibit A to this complaint.)
- 14. The MSA also allows AT&T to impose a USF pass-through charge on ESI in order for AT&T to recover its contributions to the USF via a separate line item on AT&T's invoices. (See Section 5.1(b) of the MSA, attached hereto as Exhibit B.)
- 15. The USF is funded by contributions from all providers of telecommunications. Under the Commission's rules, those providers must pay a percentage of their interstate end-user revenues into the fund. This percentage is called the contribution factor. The Commission sets the amount of the contribution factor four times a year (on a quarterly basis), increasing or decreasing it depending upon the amount of money required by the USF's various programs which distribute funds to carriers for certain public policy purposes.⁵
- 16. As noted in paragraph 6, above, many carriers initially imposed USF pass-through charges on their customers that significantly exceeded the carrier's actual contribution amount,⁶

See "Contribution Methodology & Administrative Filings" at https://www.fcc.gov/general/contribution-methodology-administrative-filings. The contribution factors established by the Commission in the years since the current system began can be found at https://www.fcc.gov/general/contribution-factor-quarterly-filings-universal-service-fund-usf-management-support.

⁶ USF Truth-in-Billing Order at para. 46 ("[U]niversal service line items currently vary widely among carriers, and often significantly exceed the amount of the contribution factor").

including AT&T.⁷ The Commission found this practice to be unreasonable and prohibited it in the *USF Truth-in-Billing Order*.⁸ The *Order* adopted Sec. 54.712 of the rules which provides as follows:

Federal universal service contribution costs may be recovered through interstate telecommunications-related charges to end users. If a contributor chooses to recover its federal universal service contribution costs through a line item on a customer's bill <u>the amount of the federal universal service line-item charge may not exceed the interstate telecommunications portion of that customer's bill times the relevant contribution factor.</u>

47 C.F.R. § 54.712 (emphasis added).

- 17.AT&T's violation of this rule results from a systemic feature of its billing system. The Declaration of Julie Gardner attached to this complaint describes AT&T's billing system in detail.
- 18. As Ms. Gardner explains, AT&T's automated biller uses a complex system of sub-accounts to record usage, usage charges, and credits. The sub-account system is so complex that a single month's bill can easily reach 20,000 pages. Gardner Declaration at ¶ 6. Every month, the system totals up all relevant sub-account charges and contract credits to derive the final amount that ESI must pay.
- 19. The flaw in AT&T's system is that it calculates AT&T's USF pass-through charge too early in the billing process, <u>before</u> the system reduces the amount due by applying all of the credits provided for in the MSA. Gardner Declaration at ¶¶ 7-10. Specifically, AT&T's billing system multiplies the relevant USF contribution factor times dollar charges at the sub-account level on ESI's bill, which is before the system applies the MSA credits that

⁷ *Id.* at para. 46 and note 124 (AT&T imposed pass-through charges of 11% and 9.6% when the actual FCC contribution factor was only 7.28%).

⁸ USF Truth-in-Billing Order at para. 49.

reduce those charges. Gardner Declaration at ¶ 10. Thus, instead of collecting a pass-through charge that equals "the interstate telecommunications portion of [ESI's] bill times the relevant contribution factor," as required by the Commission's rules, AT&T's billing system multiplies the Commission's USF contribution factor times intermediate amounts that are far higher than the interstate telecommunications portion of ESI's bill, namely, amounts that have not been reduced by application of ESI's contract credits during the period from [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION]. Gardner Declaration at ¶ 10, 12. As a result, AT&T's system violates the Commission's rules by imposing a universal service line item charge that exceeds "the interstate telecommunications portion of [ESI's] bill times the relevant contribution factor."

- 20. By way of example, assume ESI has two sub-accounts in a particular month, with \$50 and \$100 in charges for telecommunications service, and that it is entitled to a \$30 credit against those charges pursuant to its contract. Assume also that the USF factor is 18%. AT&T's flawed system would calculate ESI's USF pass-through charge to be \$27 [(\$50 x 18%)) + (\$100 x 18%)]. But AT&T's actual charges to ESI for telecommunications total only \$120, thanks to the \$30 credit. AT&T does not apply that credit to the telecommunications charges, however, until *after* it calculates a USF pass-through charge at the sub-account level. If AT&T were to apply the \$30 credit and then calculate the USF pass-through charge, the charge would be \$21.60 (\$120 x 18%), not \$27.
- 21. The Gardner Declaration uses ESI's actual [BEGIN CONFIDENTIAL INFORMATION]

 [END CONFIDENTIAL INFORMATION] AT&T invoice to dissect AT&T's

- billing process and reveal the specific point at which its process deviates from the Commission's requirements.
- 22. Because of its failure to total up all charges and contract credits before calculating its USF pass-through charge, AT&T's billing system multiplied the relevant USF contribution factor times an amount that is far greater than the actual amount of telecommunications charges on ESI's bill. The resulting "federal universal service line-item charge" therefore exceeds "the interstate telecommunications portion of that customer's bill times the relevant contribution factor," contrary to the express mandate of Sec. 54.712 of the FCC's rules.
- 23. The ripple effects of this rule violation resulted in other inflated charges on the ESI bill. Specifically, AT&T charges an "administrative expense fee" ("AEF") on interstate telecommunications charges which supposedly recovers AT&T's costs of "administering" its USF contributions. Gardner Declaration at ¶ 22. Just as it does with the USF pass-through charge, AT&T calculates its AEF at the sub-account level, before the point in its billing process when it applies the contract credits at issue in this complaint. AT&T then calculates its USF pass-through charge based on that interim AEF amount. By using a precredit amount to calculate its AEF and then assessing a USF pass-through charge on that inflated AEF, AT&T inflates the portion of the USF pass-through charge that is attributable to the AEF charge. Gardner Declaration at ¶ 22. Once again, AT&T's resulting USF pass-through charge exceeds "the interstate telecommunications portion of that customer's bill times the relevant contribution factor," contrary to the express mandate of Sec. 54.712 of the Commission's rules.
- 24. In a similar fashion, AT&T applies state and local taxes to its USF pass-through charge and (once again) does so at the sub-account level, before all relevant charges and credits have

- been totaled. As a result, AT&T inflates the state and local tax surcharge by basing it in part on the amount of the inflated, pre-credit, USF pass-through charge. Gardner Declaration at ¶ 23.
- 25. ESI seeks a refund of the amount by which AT&T's USF pass-through charge was overstated due to AT&T's inclusion of dollars in the base amount which should have been removed by the contract credits. That amount can easily be quantified by multiplying the dollar amount of ESI's contract credits by the USF contribution factors in effect at the time the contract credits were applied to ESI's account, plus an upward adjustment to the factors to correct for AT&T's inflated AEF base amount. This yields the amount by which AT&T's USF pass-through charge exceeded the level permitted by the FCC's rules. Gardner Declaration at ¶ 11. If each contract credit is multiplied by the USF contribution factor applicable at the time the contract credit was applied to ESI's bill, and adjusted to reflect the AEF-related overcharge, then the total overpayment for which ESI is now seeking reimbursement would be [BEGIN CONFIDENTIAL INFORMATION] CONFIDENTIAL INFORMATION]. Gardner Declaration at ¶ 24. In addition, AT&T overcharged ESI [BEGIN CONFIDENTIAL INFORMATION] CONFIDENTIAL INFORMATION] in state and local taxes by applying those tax rates to the inflated, pre-credit USF pass-through charge. Accordingly, the total amount of the refund ESI seeks from AT&T is [BEGIN CONFIDENTIAL INFORMATION] **CONFIDENTIAL INFORMATION**]. Gardner Declaration at ¶ 25. ESI's contract credits, the USF factors in effect during the term of the MSA, the AEF adjustment, and the calculations resulting in the amounts above are explained in detail in the Gardner Declaration attached hereto and displayed in a spreadsheet attached to that declaration as Exhibit 4.

REQUEST FOR RELIEF

WHEREFORE, Complainant ESI respectfully requests that the Commission:

- a. find that the facts as stated herein are true and accurate;
- b. conclude that AT&T's excessive USF pass-through charges violate Section 54.712 of the Commission's rules and therefore constitute an unjust and unreasonable practice under Section 201 of the Act;
- c. order AT&T to refund to ESI the amount of [BEGIN CONFIDENTIAL INFORMATION]

 [END CONFIDENTIAL INFORMATION] and interest thereon, in addition to amounts that may accrue during the pendency of this complaint; and
- d. grant Complainant such other and further relief as the Commission deems appropriate.

Respectfully submitted,

Collen Boothly

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Counsel for Complainant

Dated: December 13, 2016

CERTIFICATION REGARDING SETTLEMENT

I, Colleen Boothby, hereby certify that ESI did, in good faith,
attempt to discuss the possibility of settlement with AT&T prior to the filing of this
formal complaint by [BEGIN CONFIDENTIAL INFORMATION]
[END CONFIDENTIAL INFORMATION].

Colleen Boothby

Date: December 13, 2016

DECLARATION RE FILING FEE

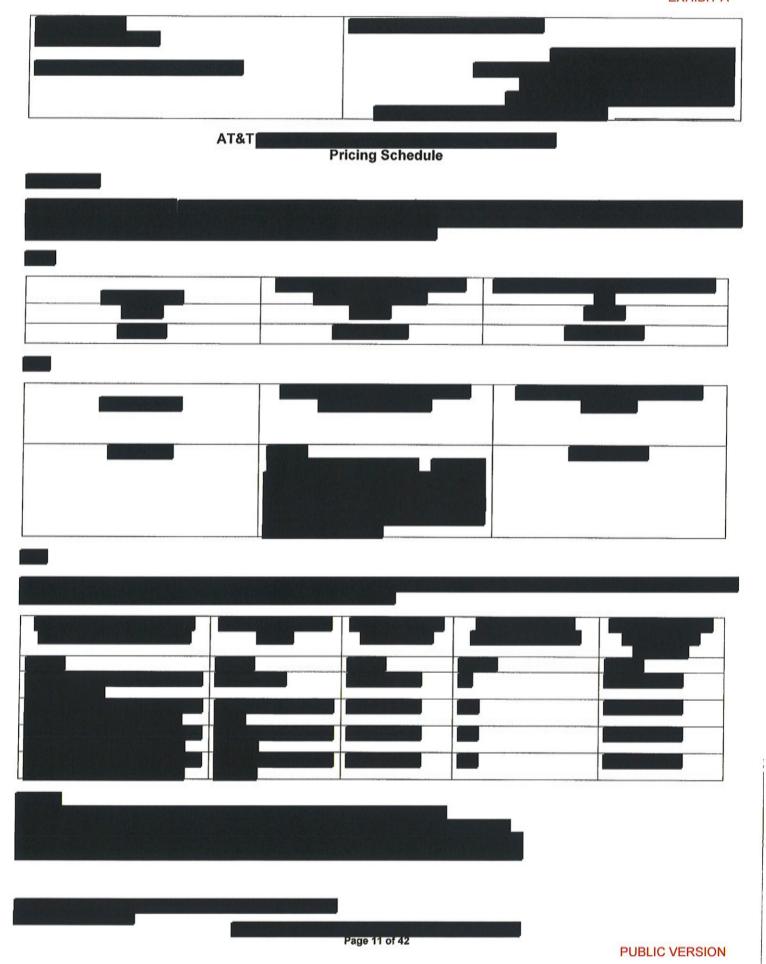
I, Colleen Boothby, hereby certify under penalty of perjury that ESI paid the filing fee of \$230.00 required by 47 C.F.R. § 1.1106 on December 13, 2016 via credit card using the FCC's fee filer system. The FRN associated with the payment was 0025843822.

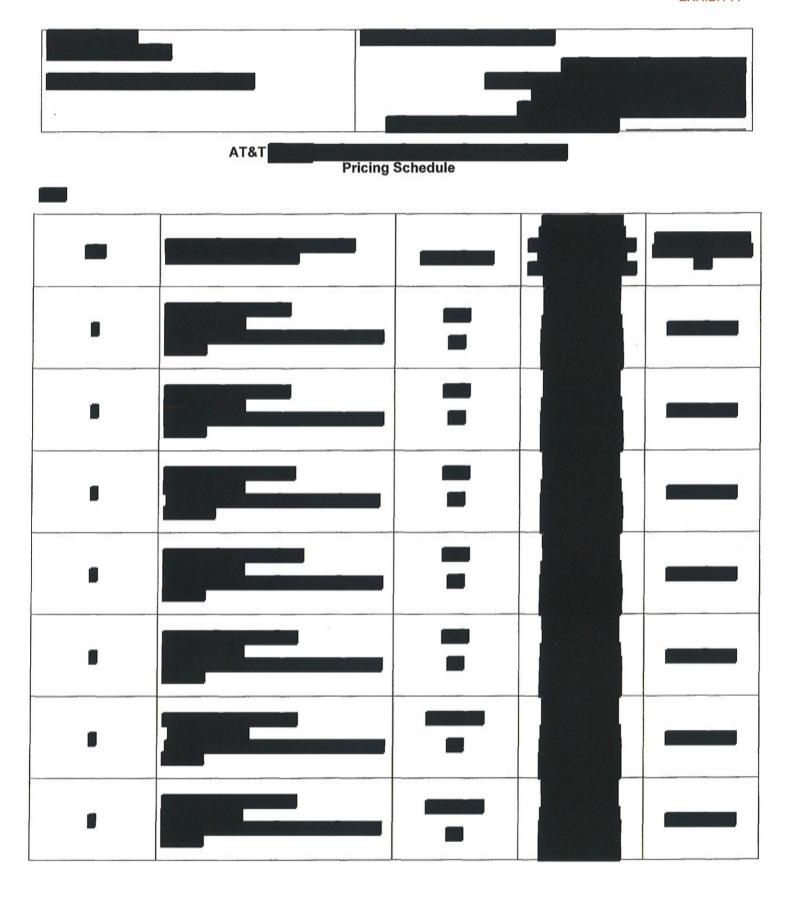
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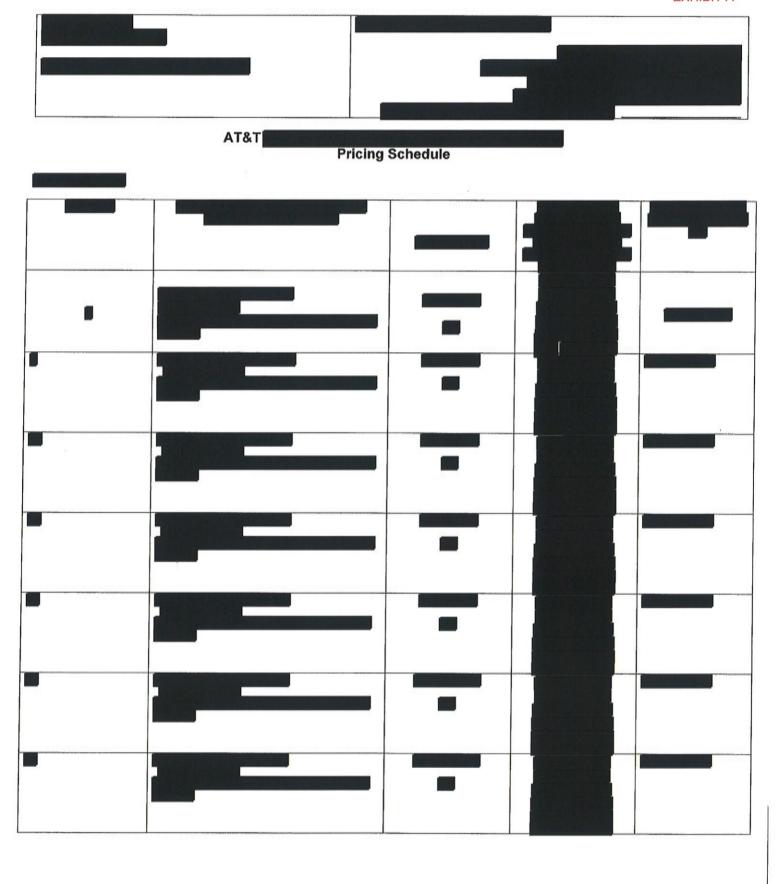
Colleen Boothby

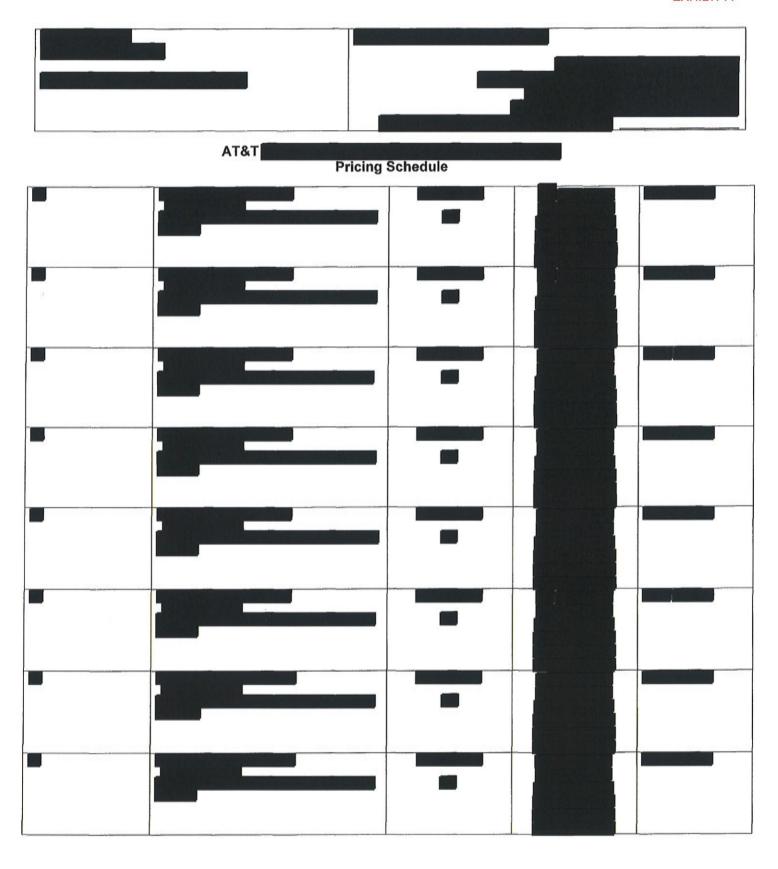
Date: December 13, 2016

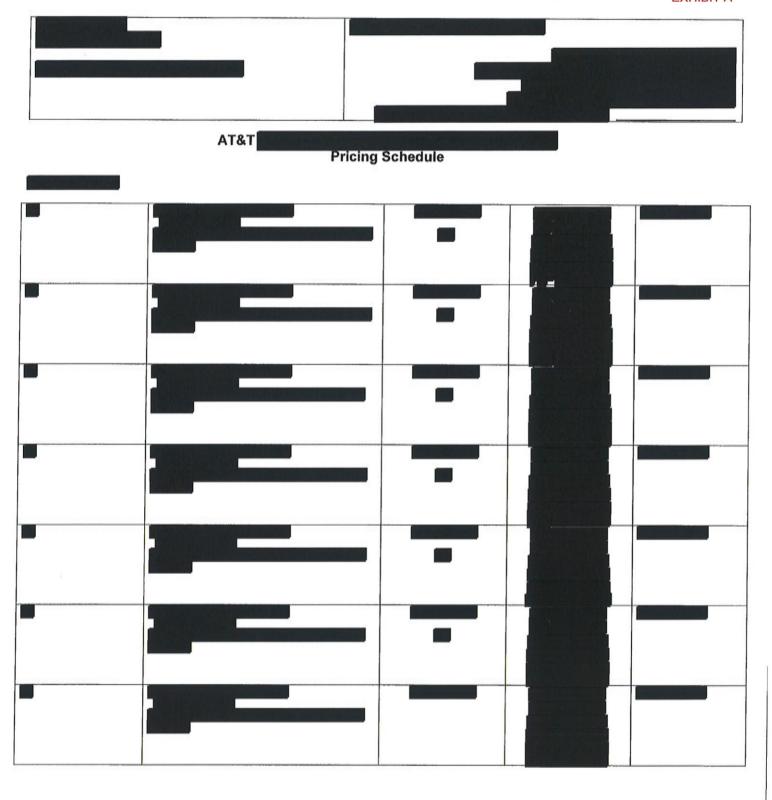


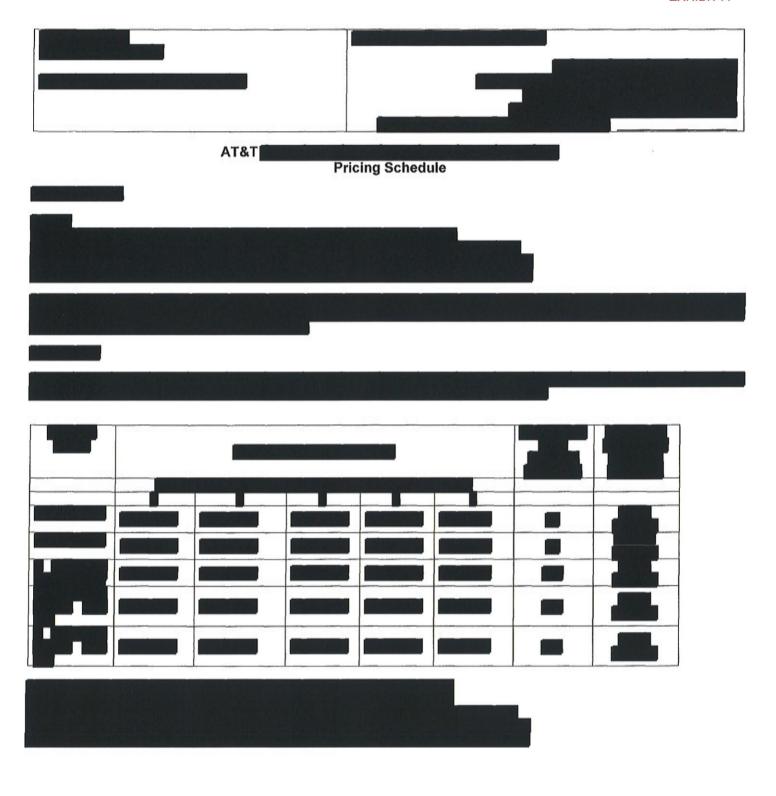


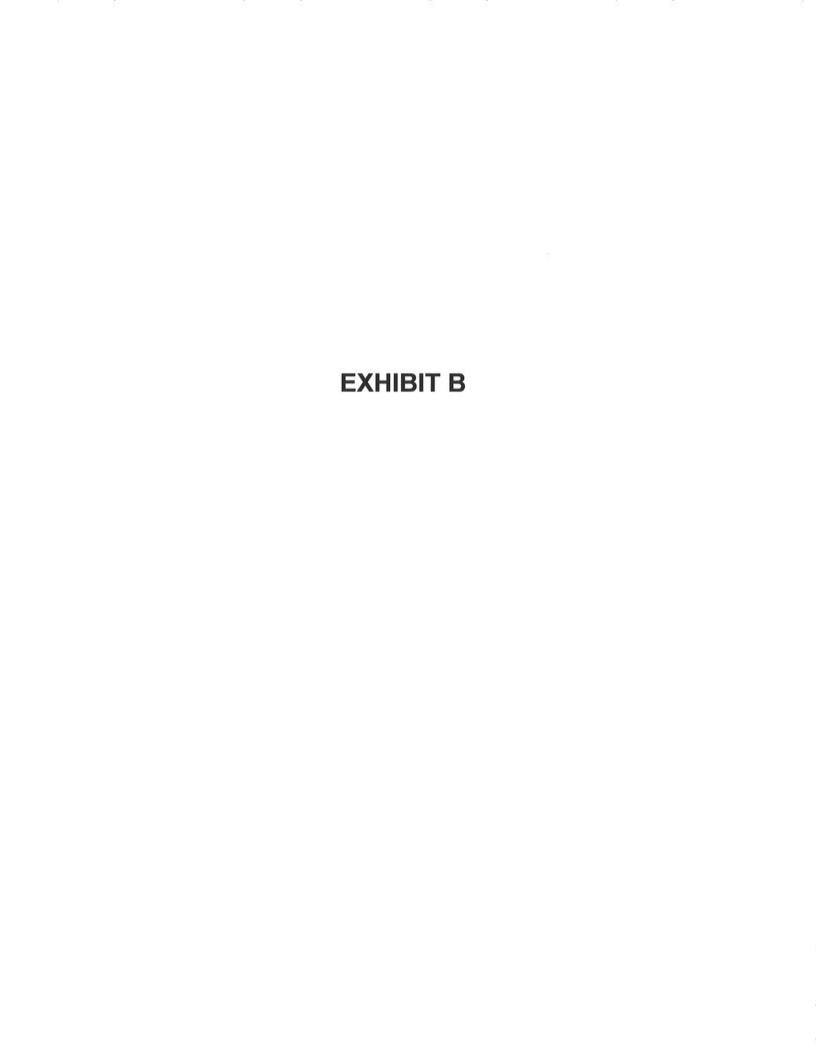


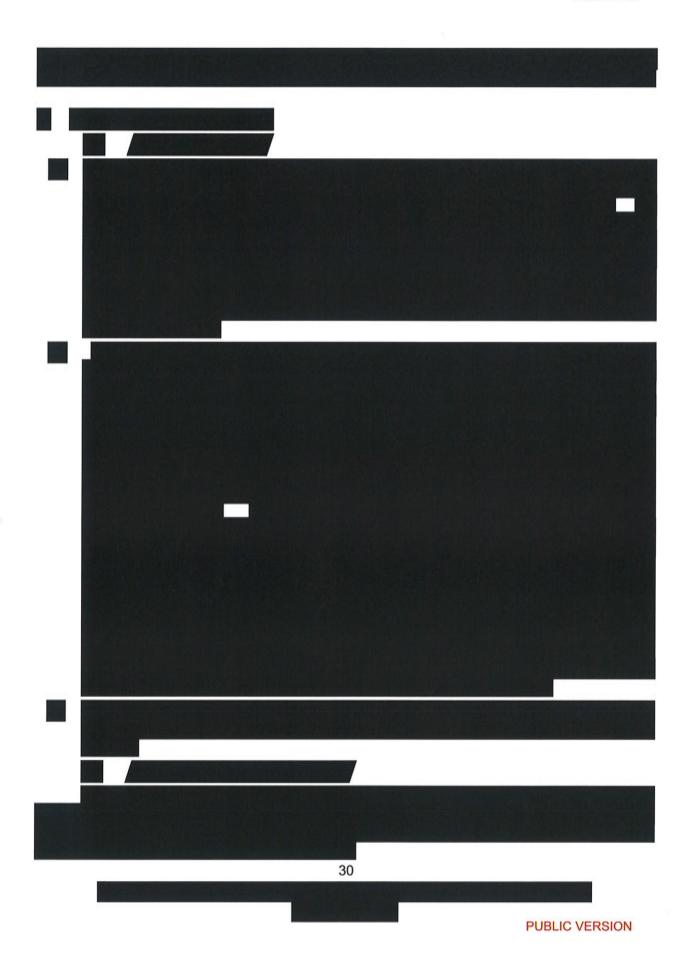


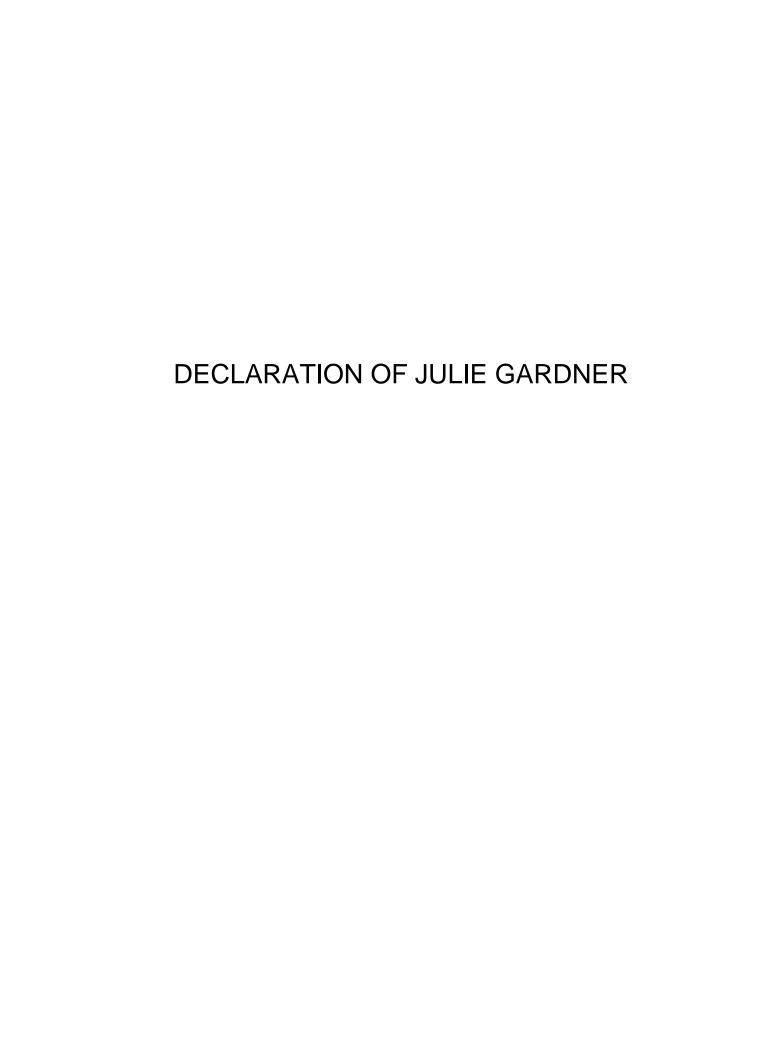












Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

In the Matter of)
ESI))
Complainant,))) File No
V)
AT&T, CORP,))
Respondent))
Respondent)))

DECLARATION OF JULIE GARDNER

- I, JULIE A. GARDNER, declare under penalty of perjury that the following is true and correct:
- 1. I am a Senior Consultant with TechCaliber Consulting, LLC ("TC2"), a leading provider of strategic sourcing, benchmarking, optimization, contract compliance, and technology consulting to Fortune 500 enterprise customers. I graduated with honors from the J.M. Tull School of Accounting at the University of Georgia with a Bachelor of Science degree in accounting in 1993. Upon graduation, I joined KPMG Peat Marwick's audit practice for nearly four years, leaving in 1997 as a supervising senior accountant. From 1998 to 2005, I worked as a manager of IT Finance at Gateway, Inc., a major manufacturer and supplier of personal computers and related hardware, software, and technical support. At Gateway, I was

responsible for identifying billing errors and irregularities in vendor billing systems and then negotiating the recovery of millions of dollars in refunds and other adjustments. I also managed multiple rate reviews and requests for proposals ("RFPs") for Gateway's procurement of global telecommunications services. In 2008, I joined TC2 as a Senior Consultant.

- 2. In my role as a Senior Consultant at TC2, I advise clients on all aspects of telecommunications procurement, though I specialize in audits and compliance assessments of service provider contract performance and invoices. I also provide services related to contract implementation, new service migration, cost savings reviews, and optimization for interexchange voice and data services, local exchange services, and wireless services. Finally, I assist clients in reviewing and analyzing their billing data, contract terms, and spending trends as well as achieving decreased telecom expense and effective contract/vendor management. In this capacity, I have reviewed over \$3 billion in carrier charges to enterprise customers.
- 3. I make this declaration in support of the complaint captioned above and filed by Express Scripts, Inc. ("ESI") against AT&T Corp. ("AT&T") regarding AT&T's collection of unjust and unreasonable USF pass-through charges from ESI.¹ My analysis of AT&T's billing data for ESI revealed that AT&T has imposed (and to date is still imposing) USF pass-through charges on ESI that exceed the amount permitted under the Commission's rules. In a nutshell, AT&T's billing system calculates its USF pass-through charge too early in the billing process, i.e., before the system reduces the amounts due by applying contract credits specified in the pricing schedules of the AT&T-ESI Master Services Agreement ("MSA") for [BEGIN]

¹ This Declaration includes my analysis of invoices sent to ESI and separately to Medco Health Solutions, an affiliate of ESI.

CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION]. As a result, AT&T is basing its calculation of ESI's USF pass-through charges on an inflated amount which in turn results in inflated USF pass-through charges.

- 4. In the paragraphs below, I describe AT&T's calculations and quantify the dollar amount by which AT&T's USF pass-through charges exceed the amount permitted by the Commission's Truth-in-Billing Rule for USF pass-through charges.
- 5. At the end of [BEGIN CONFIDENTIAL INFORMATION] [END]

 CONFIDENTIAL INFORMATION], ESI asked me to review its billing data from AT&T for the [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] that ESI obtains from AT&T pursuant to the MSA. I reviewed invoices that ESI had received from AT&T, as well as ESI's internal business records as they were maintained in the ordinary course of business, since the time that the MSA with AT&T has been in place [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] through the most recent invoice period as of the date of this declaration [BEGIN CONFIDENTIAL INFORMATION].
- 6. AT&T's automated billing and invoicing system is an electronic database of contract, pricing, and usage information that uses a complex system of sub-accounts to identify and track various customer service locations, types of services, usage levels, fees, charges, and credits. AT&T's billing system is so complex that, for large enterprise customers like ESI, a single month's paper invoice can easily reach 20,000 pages.

- 7. My review of AT&T's invoices and associated data for ESI revealed that AT&T's billing system produces an excessive USF pass-through charge because of the way it fails to take into account the contract credits provided for in the MSA.
- 8. Specifically, AT&T calculates USF pass-through charges for each sub-account under ESI's master account using only the amounts due in each sub-account. (AT&T has established dozens of these sub-accounts under ESI's master account.) AT&T uses the amount due for interstate telecommunications services in each sub-account to calculate a USF pass-through charge for each sub-account individually. AT&T then adds that USF pass-through charge to the amount due in each sub-account.
- 9. But AT&T fails to apply ESI's contract credits which would reduce the amounts due in the sub-accounts before calculating each sub-account's USF pass-through charge.

 Instead, AT&T adds up the sub-account totals (which include each sub-account's USF pass-through charge) into a grand total for ESI's master account and only then applies the contract credits to reduce the total "rolled up" amount due under ESI's master account. AT&T does not at that point (nor at any point in its calculations) reduce the USF pass-through charges to reflect the shrinkage in the base amounts resulting from the contract credits.
- 10. By calculating its USF pass-through charge on each sub-account, before the charges have been reduced by contract credits, AT&T uses a base revenue amount to calculate its USF pass-through charge that is higher than its actual revenues from ESI for telecommunications services. Because they are based on inflated amounts, the USF pass-through charges themselves are inflated. Thus, instead of collecting a pass-through charge that equals "the interstate telecommunications portion of [ESI's] bill times the relevant contribution factor," as required by the Commission's rules, AT&T's billing system multiplies

the Commission's USF contribution factor times intermediate amounts that are far higher than the interstate telecommunications portion of ESI's bill, namely, amounts that have not been reduced by application of ESI's contract credits.

11.AT&T could have corrected for this defect in its billing system in a variety of ways. It could, for example, have changed nothing in its system protocol described above and simply subtracted from the final amount due at the main account level the dollar value of the contract credits times the relevant USF contribution factor. This simple calculation re-captures the precise dollar amount by which AT&T inflated its USF pass-through charges when it applied the Commission's USF contribution factor to the inflated, pre-credit sub-account amounts. This is also the very method AT&T uses at the main account level to reduce charges for "taxes and fees." It initially calculates those charges using inflated, pre-credit amounts, just as it does for its USF pass-through charge, and then it reduces them at the main account level. But AT&T does not use that same method to reduce the USF pass-through charges at the main account level to account for the impact of the contract credits.

12. Instead, for each individual sub-account, AT&T (1) identifies the amount due in that sub-account, (2) calculates USF-pass through charges using that sub-account's numbers as a base, and then (3) offsets the total amount due on the entire bill with appropriate contract credits, but without simultaneously adjusting down the USF pass-through charge to reflect the shrinkage in the base amount caused by the credits. Therefore, for the period of time beginning in [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]

CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] credits),

AT&T has used a preliminary, inflated amount – rather than the actual, post-credit amount due

– as its base for calculating USF pass-through charges, in violation of the FCC's Truth-in
Billing rule for USF pass-through charges.

13. ESI's [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] illustrates the systemic defect described above. The invoice demonstrates that AT&T calculates surcharges, including USF pass-through charges, on a sub-account by sub-account basis *prior to* applying the contract credits, so that the relevant USF charges are not reduced by the proportional amount of contract credits.

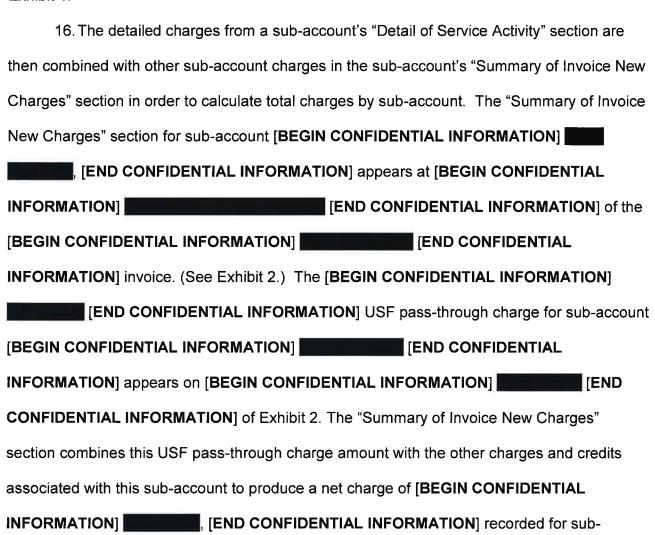
14. I will use sub-account [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL
INFORMATION] and ESI's [BEGIN CONFIDENTIAL INFORMATION]

[END
CONFIDENTIAL INFORMATION] invoice as an example of how AT&T's system works. The invoice pages I reference below are attached to this Declaration as Exhibits with relevant amounts highlighted.

15. The starting point for understanding AT&T's system is a section of the invoice entitled "Detail of Service Activity." The "Detail of Service Activity" section for sub-account [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] invoice. (See Exhibit 1.) The "Detail of Service Activity" section breaks out the one-time, recurring, and other

usage charges specific to each individual sub-account. It is at this point in the process, before application of any contract credits, that AT&T's system also calculates and posts a USF pass-through charge for each sub-account. For sub-account [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] the charge (labeled "Universal Connectivity Charge") appears as a "One Time Charge" of [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] at [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] of Exhibit 1.



account [BEGIN CONFIDENTIAL INFORMATION]
CONFIDENTIAL INFORMATION] of Exhibit 2. (The credits listed in the "Summary of Invoice
New Charges" section for this sub-account are not related to the contract credits at issue in
this complaint. They are routine operational credits, such as the [BEGIN CONFIDENTIAL
[END CONFIDENTIAL INFORMATION] credit shown at
[BEGIN CONFIDENTIAL INFORMATION]
INFORMATION] of Exhibit 2.)
17 Nove the charges from the "Cummon, of Invaine New Charges" continue for all cub

17. Next, the charges from the "Summary of Invoice New Charges" sections for all subaccounts are combined in an invoice's "Summary of Accounts" section to produce the total monthly bill. The "Summary of Accounts" section for ESI's [BEGIN CONFIDENTIAL **INFORMATION**] [END CONFIDENTIAL INFORMATION] invoice appears as Exhibit 3 to this Declaration. The [BEGIN CONFIDENTIAL INFORMATION] [END] CONFIDENTIAL INFORMATION] in charges from sub-account [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] which includes the original [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] USF pass-through charge, appears at [BEGIN CONFIDENTIAL **INFORMATION**] [END CONFIDENTIAL INFORMATION] of Exhibit 3. (The specific [BEGIN CONFIDENTIAL INFORMATION] INFORMATION] USF pass-through amount does not appear separately on [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] because AT&T combines it with operational credits and other charges and then posts the resulting net amount of [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL **INFORMATION**].)

18. It is at this point in the process that AT&T finally applies ESI's contract credits. ESI's contract credit of [BEGIN CONFIDENTIAL INFORMATION] CONFIDENTIAL INFORMATION] appears in this section of the invoice at [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] of Exhibit 3. The contract credit substantially reduces the net amount due to AT&T from ESI for the month of [BEGIN CONFIDENTIAL INFORMATION] INFORMATION]. 19. [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL **INFORMATION**] also lists a reduction of [BEGIN CONFIDENTIAL INFORMATION] **END CONFIDENTIAL INFORMATION**] in taxes and fees to reflect the amount by which those taxes and fees were overstated because AT&T used a pre-credit amount to calculate them. But AT&T makes no such reduction to correct the overstatement of its USF pass-through charges. Instead, at [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] invoice, AT&T records the original amount of [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] in charges for sub-account [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] which includes the pre-credit USF pass-

20. This, then, is the defect in the billing system AT&T used to produce all of the invoices AT&T has generated for ESI's account. By locking in USF pass-through charge amounts at the sub-account level, before application of ESI's contract credits, and then failing to reduce the total USF pass-through amount at the main account level to reflect the impact of

through charge, without an adjustment for the impact of the contract credits.

those credits (as it does for taxes and fees), AT&T assesses an inflated USF pass-through charge.

21. This defect can be easily remedied. AT&T should have (1) multiplied the contract credit amounts by the USF contribution factors in effect at the time the credits were applied to ESI's account, which would compute the amount of the USF pass-through charge that is attributable to dollars that were subsequently removed by application of the credit, and then (2) reduced the total amount due from ESI by that amount. Doing so would have ensured that AT&T did not impose pass-through charges that exceed "the interstate telecommunications portion of that customer's bill times the relevant contribution factor," in violation of the Commission's rules.

22. AT&T's treatment of ESI's contract credits has a ripple effect on certain other surcharges that AT&T assesses on its customers. Specifically, AT&T charges an "administrative expense fee" ("AEF"), assessed as a percentage² of interstate telecommunications charges, which supposedly recovers AT&T's costs of "administering" the USF, i.e., collecting its USF pass-through charge. Just as it does with the USF pass-through charge, AT&T calculates its AEF charge at the sub-account level, before it applies the contract credits at issue in this complaint. AT&T then applies its USF pass-through charge to its inflated AEF charge. By using a pre-credit base amount to calculate its AEF and then assessing a USF pass-through on that inflated AEF, AT&T inflates the USF pass-through charge attributable to the AEF charge.

² AT&T's AEF was .88% when service under the MSA began. AT&T increased its AEF to 1.63% effective October 1, 2016. The calculations in this declaration and the complaint reflect this increase.

23. Once again, the dollar impact of this defect can be easily quantified, using the information displayed at Page 2 of Exhibit 4 to this Declaration. The dollar value of AT&T's AEF billing error is that part of its USF pass-through charge which was based on AT&T's precredit AEF charge, i.e., an AEF charge applied to a base amount that is overstated by the amount of the credits. Expressed mathematically, the dollar value of the AEF billing error is equal to the relevant USF percentage factor times the AEF percentage factor times the dollar amount of ESI's credits. The column entitled "USF on AEF" on Page 2 of Exhibit 4 displays the percentages that result from multiplying the USF percentage factors in effect during the relevant time period by the AEF percentage factors in effect during the same time periods. Those percentages can then be applied to ESI's credits to calculate the amount by which AT&T's application of its USF pass-through charge to its AEF charge violated the Commission's rules.

24. In addition, AT&T applies state and local taxes to its USF pass-through charge and (once again) does so at the sub-account level. As a result, the state and local tax surcharge is calculated on the inflated, pre-credit USF pass-through charge. As discussed above, AT&T reduces total state and local taxes due when it applies the contract credits at the master account level. But that reduction does not correct for the overstatement of state and local taxes resulting from AT&T's use of the inflated, pre-credit USF surcharge to calculate those taxes in the first place.

25. Over the term of the MSA to date, ESI's pre-tax contract credits have totaled [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]. If the contract credits are multiplied by the USF factors applicable at the time each credit was applied to ESI's bill, the total overpayment for which ESI is now seeking reimbursement would

INFORMATION]. This is the amount by which AT&T's USF pass-through charge exceeded the level permitted by the FCC's rules. In addition, AT&T overcharged ESI [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION] in state and local taxes by applying those tax rates to the inflated, pre-credit USF pass-through charge. Accordingly, the total amount due to ESI from AT&T up to the time of this Declaration is [BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]. ESI's contract credits, the calculations underlying the figures above, and the USF factors in effect during the term of the MSA are displayed in the spreadsheet attached to this Declaration as Exhibit 4.

I HEREBY DECLARE and affirm that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

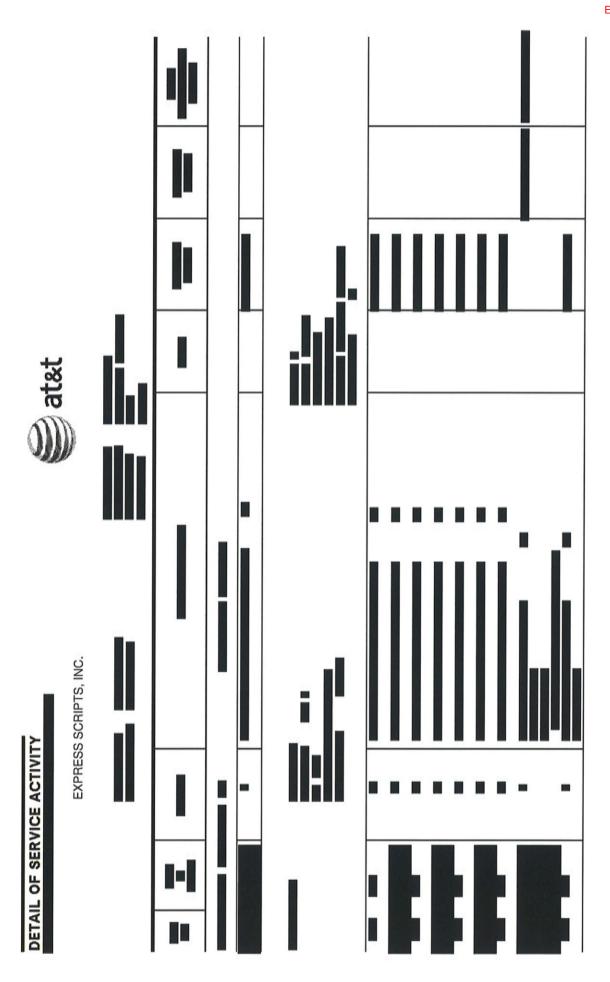
Julie Gardner

jgardner@techcaliber.com

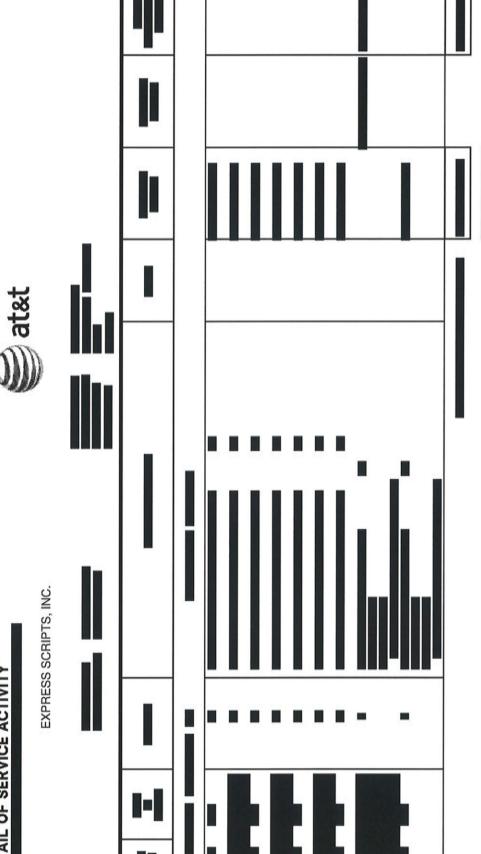
770-559-1298

Executed on December 13, 2016







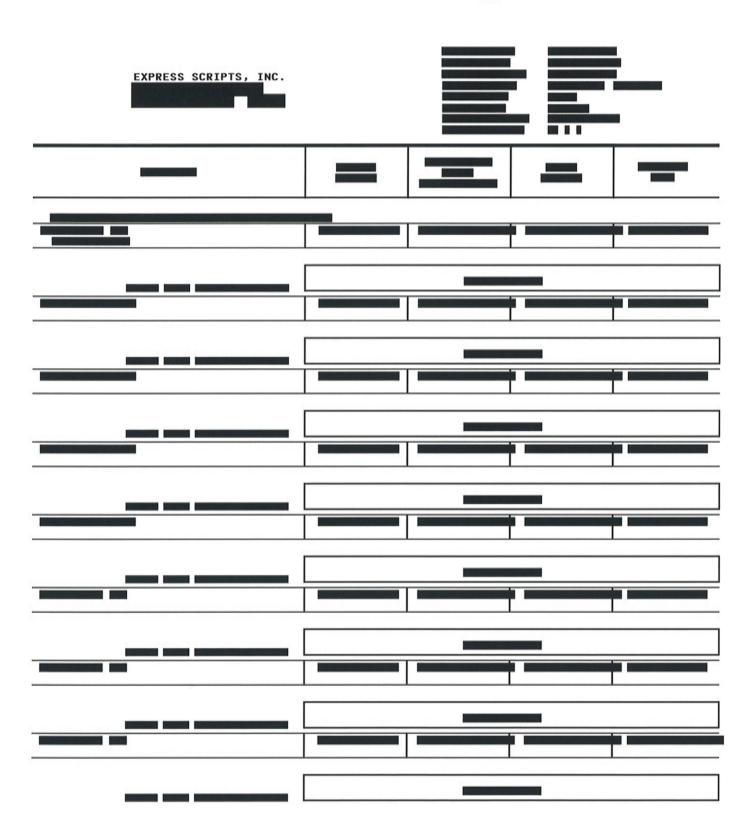


































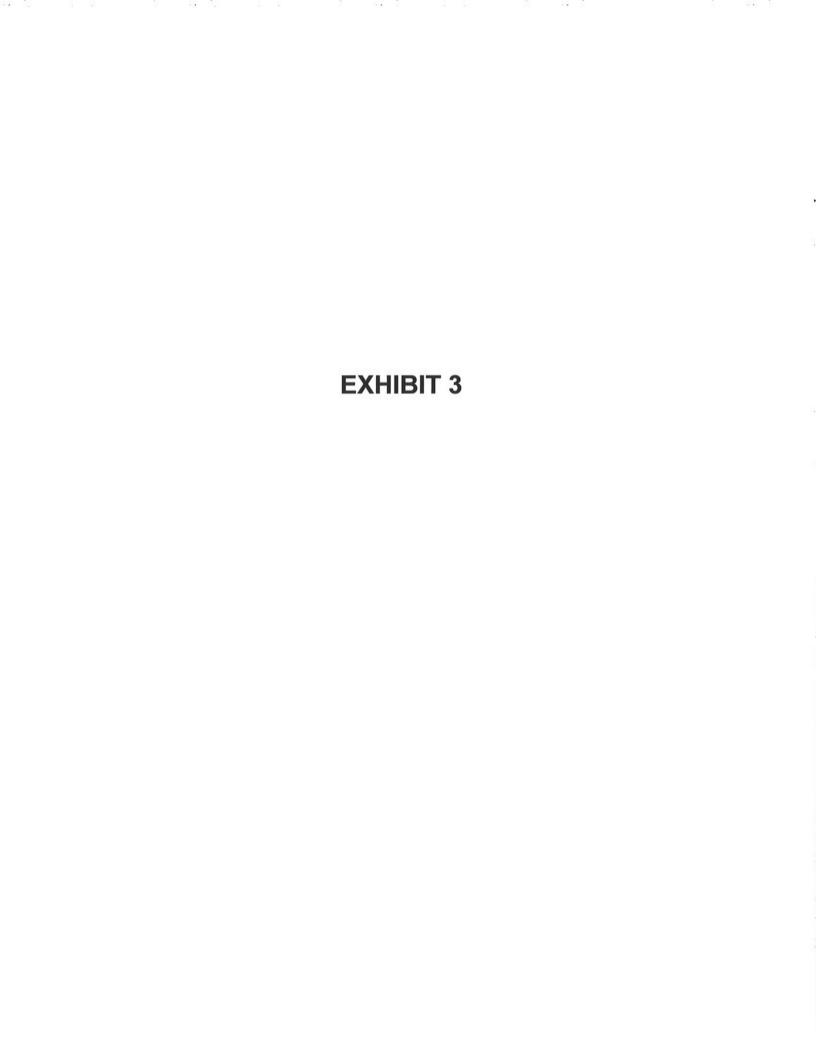










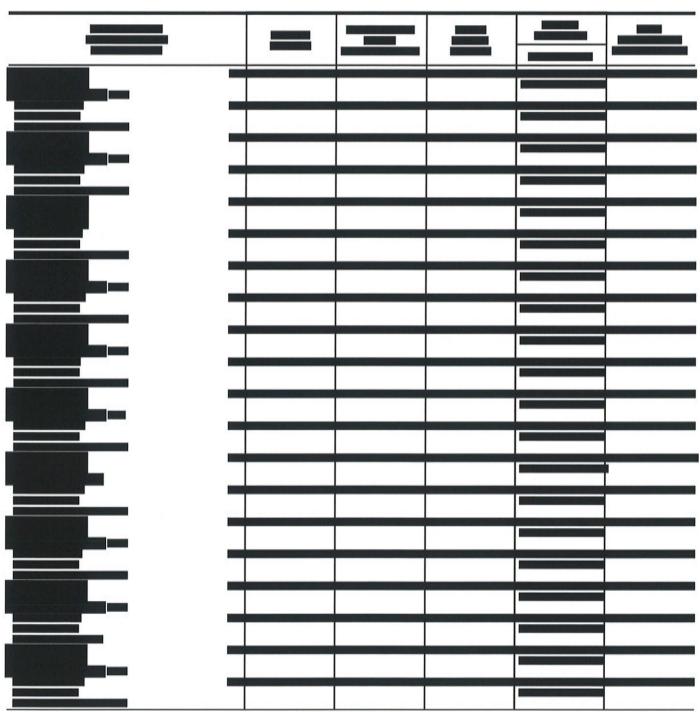


SUMMARY OF ACCOUNTS



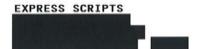




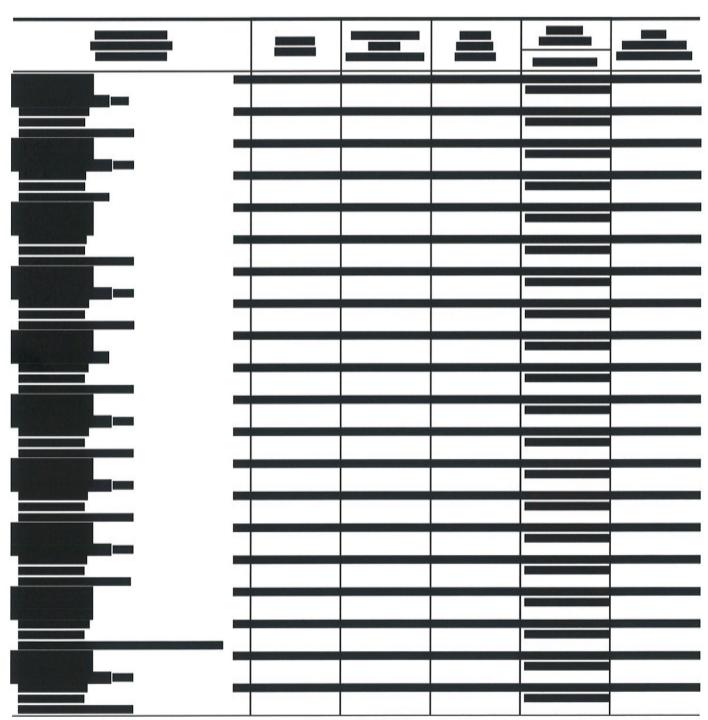


SUMMARY OF ACCOUNTS







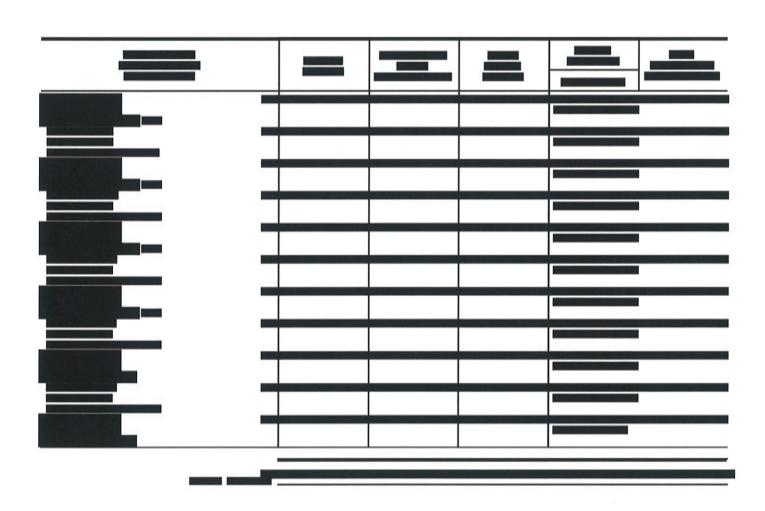


SUMMARY OF ACCOUNTS











ESI USF CLAIM SUMMARY

PUBLIC VERSION

AT&T	Base USF Factor	USF Rate x AEF Rate	Composite USF Rate
2008 Q4	11.40%	0.10%	11.50%
2009 Q1	9.50%	0.08%	9.5836%
2009 Q2	11.30%	0.10%	11.40%
2009 Q3	12.90%	0.11%	13.01%
2009 Q4	12.30%	0.11%	12.41%
2010 Q1	14.10%	0.12%	14.22%
2010 Q2	15.30%	0.13%	15.43%
2010 Q3	13.60%	0.12%	13.72%
2010 Q4	12.90%	0.11%	13.01%
2011 Q1	15.50%	0.14%	15.64%
2011 Q2	14.90%	0.13%	15.03%
2011 Q3	14.40%	0.13%	14.53%
2011 Q4	15.30%	0.13%	15.43%
2012 Q1	17.90%	0.16%	18.06%
2012 Q2	17.40%	0.15%	17.55%
2012 Q3	15.70%	0.14%	15.84%
2012 Q4	17.40%	0.15%	17.55%
2013 Q1	16.10%	0.14%	16.24%
2013 Q2	15.50%	0.14%	15.64%
2013 Q3	15.10%	0.13%	15.23%
2013 Q4	15.60%	0.14%	15.74%
2014 Q1	16.40%	0.14%	16.54%
2014 Q2	16.60%	0.15%	16.75%
2014 Q3	15.70%	0.14%	15.84%
2014 Q4	16.10%	0.14%	16.24%
2015 Q1	16.80%	0.15%	16.95%
2015 Q2	17.40%	0.15%	17.55%
2015 Q3	17.10%	0.15%	17.25%
2015 Q4	16.70%	0.15%	16.85%
2016 Q1	18.20%	0.16%	18.36%
2016 Q2	17.90%	0.16%	18.06%
2016 Q3	17.90%	0.24%	18.14%
2016 Q4	17.40%	0.24%	17.64%



INFORMATION DESIGNATION: INDIVIDUALS

(i) The name, address, and position of each individual believed to have firsthand knowledge of the facts alleged with particularity in the complaint, along with a description of the facts within any such individual's knowledge.

Julie Gardner has first-hand knowledge of the facts alleged in the Complaint regarding the errors in AT&T calculation of its USF pass-through charges and the dollar value of the overcharges resulting therefrom. Ms. Gardner is a Senior Consultant with TechCaliber Consulting, LLC. Her address is 3980 Merriweather Woods, Alpharetta, GA 30022.

INFORMATION DESIGNATION: DOCUMENTS

(ii) A description of all documents, data compilations, and tangible things in the complainant's possession, custody, or control, that are relevant to the facts alleged with particularity in the complaint.

#	Document	Date Prepared, Mailed, Transmitted or Otherwise Disseminated	Author, Preparer, or Other Source	Recipient(s) or Intended Recipient(s)	Physical Location of Exhibit	Description of Relevance to Matters Contained in the Complaint
1	Master Service Agreement	[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]	Parties and counsel	Multiple employees and counsel for both companies	Stored electronically with Complainant's counsel. Multiple electronic occurrences with both parties	Establishes schedule of credits AT&T agreed to apply to Complainant's bills. An example of an MSA table of credits and schedule for application to Complainant's bills is attached to the Declaration supporting the complaint.
2	List of credits applied to ESI's bills	[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]	Julie Gardner	Complainant's counsel	Stored electronically with Complainant's counsel and attached to Declaration	Summarizes total number and dollar value of credits applied to Complainant's bills. The list is attached to the Declaration.

1

3	Summary of USF factors established by the FCC and tax rates used by AT&T over the life of the contract	[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]	Julie Gardner	Complainant's counsel	Stored electronically with Complainant's counsel and attached to Declaration supporting complaint	Establishes dollar amount of damages caused by defendant's miscalculation of USF pass-through charges. The summary is attached to the Declaration supporting the complaint.
4	Invoices	[BEGIN CONFIDENTIAL INFORMATION]	Julie Gardner	Complainant's counsel	Stored electronically by AT&T on the AT&T Business Direct Portal.	Confirms miscalculation of USF pass-through charge.
5	ESI business records	[BEGIN CONFIDENTIAL INFORMATION] CONFIDENTIAL INFORMATION]	Julie Gardner	Multiple employees of ESI	Stored electronically with ESI and Julie Gardner	Confirms miscalculation of USF pass-through charge.

INFORMATION DESIGNATION: INVESTIGATION

(iii) A complete description of the manner in which the complainant identified all persons with information and designated all documents, data compilations, and tangible things as being relevant to the dispute, including, but not limited to, identifying the individual(s) that conducted the information search and the criteria used to identify such persons, documents, data compilations, tangible things, and information.

PUBLIC VERSION

Complainant retained Julie Gardner of TechCaliber Consulting, Inc. to review the bills it received from AT&T for its VTNS service in order to determine whether AT&T's billing methodology was flawed. Ms. Gardner's review of Complainant's invoices and related documents confirmed that the flaw was present.

Certificate of Service

I, Amanda Delgado, hereby certify that a true and correct copy of the preceding Formal Complaint was hand delivered this 13th day of December, 2016, to the offices of Jeanine Poltronieri, AT&T Services, Inc., at 1120 20th Street, NW, Suite 1000, Washington, DC 20036, such delivery constituting service under § 1.735(c) of the Commission's Rules.

Amanda Delgado Legal Assistant

Levine, Blaszak, Block & Boothby, LLP 2001 L Street, NW, Ninth Floor Washington, D.C. 20036 202-857-2550